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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/001,558	10/24/2001	Shimci Fan	J6650(C)	7685

201 7590 10/01/2002

UNILEVER  
PATENT DEPARTMENT  
45 RIVER ROAD  
EDGEWATER, NJ 07020

[REDACTED] EXAMINER

BAHAR, MOJDEH

ART UNIT	PAPER NUMBER
1617	

DATE MAILED: 10/01/2002 *3*

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/001,558	FAN ET AL.
	Examiner Mojdeh Bahar	Art Unit 1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-25 is/are pending in the application.
  - 4a) Of the above claim(s) 23-25 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-22 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
 

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>2</u> . | 6) <input type="checkbox"/> Other: _____ .                                   |

***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-22, drawn to a composition comprising a surfactant, a co surfactant, a cationic polymer and a water insoluble component with an average particle size of less than 2 micrometer, classified in class 424, subclass 401, 70.17 for example.
- II. Claim 23 and 25, drawn to a method of treating hair employing a composition comprising a surfactant, a co surfactant, a cationic polymer and a water insoluble component with an average particle size of less than 2 micrometer, classified in class 424, subclass 401, 70.17 for example.
- III. Claim 24, drawn to a method of treating skin a surfactant, a co surfactant, a cationic polymer and a water insoluble component with an average particle size of less than 2 micrometer, classified in class 424, subclass 401, 70.17 for example.

Inventions I and II-III are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case hair can be treated employing dyes or herbal extracts alone. Skin can also be treated by employing moisturizers.

Inventions II and III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions have different functions.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

During a telephone conversation with Mr. Boxer a provisional election was made with traverse to prosecute the invention of Group I, claims 1-22. Affirmation of this election must be made by applicant in replying to this Office action. Claims 23-25 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claims 1-22 are herein examined on the merits.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reid et al. (USPN 5,085,857).

Reid et al. (USPN 5,085,857) teaches an aqueous shampoo composition comprising, in addition to water from 2-40% by weight of a surfactant chosen from anionic, nonionic or amphoteric surfactants or mixtures thereof, from 0.01% to 3% by weight of cationic conditioning polymer which is a cationic derivative of guar gum, from 0.01 to 10% by weight of an insoluble, non-volatile silicone, present as emulsified particles with an average particle size of less than 2 micrometers, see col. 1 line 67-col.2, line 8. Suitable anionic surfactants are alkyl sulfates, alkyl ether sulfates, alkaryl sulfonates, alkyl succinates, alkyl sulfosuccinates, N-alkoyl sarcosinates, alkyl phosphates, alkyl ether phosphates, alkyl ether carboxylates, and alpha-olefin sulfonates, see col. 2, lines 24-36. The amphoteric surfactants suitable for use in the composition of the invention are alkyl amine oxides, alkyl betaines, alkyl amidopropyl betaines, alkyl sulfobetaines, alkyl glycinate, alkyl carboxyglycinate, alkyl amphopropionate, alkyl amidopropyl hydroxysultaines, acyl taurates and acyl glutamates wherein the alkyl and acyl groups have from 8 to 10 carbon atoms. Examples include lauryl amine oxide, cocodimethyl sulfopropyl betaine and preferably lauryl betaine, cocamidopropyl betaine and sodium cocamphopropionate, see col.2, lines 58-68. The non-ionic surfactants suitable for use in the composition of Reid et al. are condensation products of aliphatic (C8-C18) primary or secondary linear or branched chain alcohols or phenols with alkylene oxides, usually ethylene oxide and generally 6-30 EO. Other suitable surfactants are mono or di alkyl alkanolamides or alkyl polyglucosides. Examples include coco mono isopropanolamide, and cocodiglucoside, see col. 2, lines 47-57. Reid et al. further teaches that the cationic conditioning polymer is a cationic derivative of guar gum, e.g., hydroxypropyl trimonium chloride, see col.3, lines 5-28. Reid et al also teaches that the shampoo composition of its invention also comprises an insoluble non-volatile silicone which

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may be one or more polyalkyl siloxanes, polyalkylaryl siloxanes or mixtures thereof, specific examples include polydimethyl siloxane, see col. 3 line 31-68. Reid et al. finally teaches that its shampoo composition may also include perfumes, dyes, coloring agents, viscosity modifiers, and herb extracts, see col. 5, lines 11-22, see also claims 1-7.

Reid et al. does not teach the particular percentages of the co-surfactant herein.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to employ co-surfactants in the percentages claimed herein.

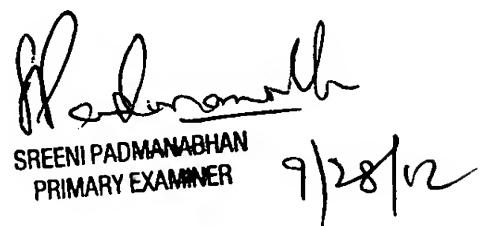
One of ordinary skill in the art would have been motivated to employ co-surfactants in the percentages claimed herein because the co-surfactants are known to be useful in shampoo composition and optimization of amounts in within the purview of the Skilled Artisan.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mojdeh Bahar whose telephone number is (703) 305-1007. The examiner can normally be reached on (703) 305-1007 from Monday to Friday from 9:00 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan, can be reached on (703) 305-1877. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Mojdeh Bahar  
Patent Examiner  
September 26, 2002

  
SREENI PADMANABHAN  
PRIMARY EXAMINER  
9/28/02